horse during a pleasure drive on the Lord's day, for which he was hired.

But if the hirer of a horse injures the property, or suffers it to be injured through his negligence, the owner may recover, although the contract be void: *Nodine* v. *Doherty*, 46 Barb. 59; see *Merritt* v. *Earle*, 29 N. Y. 121; *Carroll* v. *Staten Id. Ry. Co.*, 58 N. Y. 126; *Bertholf* v. *O'Reilly*, 8 Hun 16; affirmed 18 Abb. L. J. 389; *Stewart* v. *Davis*, 31 Ark. 518; see also, *Dodson* v. *Harris*, 10 Ala. 566.

If a person while unlawfully travelling on Sunday is injured by a dog, the act of travelling is not a contributory cause of the injury, and he may recover: *White* v. *Lang*, 128 Mass. 598. And in *O'Shea* v. *Kohn*, a recent case in the New York Supreme Court, published in 17 Chicago Leg. News 15, Sept. 20, 1884, the court held that the law would not permit a person, by means of false representations, to obtain the goods or property of another and escape liability upon the fact that the wrong was perpetrated on Sunday.

CHARLES L. BILLINGS.

Chicago.

Supreme Court of California.

HAGERTY v. POWERS.

A parent who wilfully and negligently permits his son of eleven years of age to have in his possession a loaded pistol, whereby the boy injures the infant child of another, is not liable in damages therefor.

MYRICK, J., dissents.

IN banc. Appeal from the Superior Court of the county of Sacramento.

Grove L. Johnson and *Jones & Martin*, for appellant.

Elwood Bruner and *S. P. Scanaker*, for respondent.

The opinion of the court was delivered by

ROSS, J.—The question in this case is whether the defendant, who, according to the averments of the complaint, "wilfully, carelessly and negligently suffered, permitted, countenanced and allowed" his son of eleven years of age to have in his possession a loaded pistol, which pistol the boy afterwards so carelessly used and handled as to shoot the infant child of the plaintiff, is liable in damages therefor. We have been cited to no case, controlled by the principles of the common law, that holds that the action, under such circumstances, can be maintained. It seems, that under the civil law it may be; and such an action was lately sustained by the Supreme Court of Louisiana, in the case entitled *Marionneaux* v. *Brugier*, reported in the sixteenth volume of the Reporter, page

208. Pothier, in his work on Obligations, says: "The doctrine that fathers and others shall be responsible for the acts of children under their care, which it was in their power to prevent, appears highly reasonable; but I am not aware of any case in which it is adopted in the English law." Volume 2, page 34.

In *Tifft* v. *Tifft*, 4 Denio 177, a minor daughter of the defendant, in her father's absence, and without his authority or approval, wilfully set his dog, not ordinarily a vicious animal, upon the plaintiff's hog, which was bitten and killed; and the court held that the father was not, but the child was, liable in damages. To the same effect are a number of cases cited in Schouler, Dom. Rel. sect. 263, from which he deduces the rule that a father is not liable in damages for the torts of his child, committed without his knowledge, consent or sanction, and not in the course of his employment of the child.

Under this rule, it is quite clear that the averments of the complaint do not fix upon the defendant any liability for the damages suffered by the plaintiff. Judgment affirmed.

MYRICK, J., dissenting.—I dissent. As the complaint alleges that the father wilfully, carelessly and negligently countenanced his child in having the pistol, it is sufficient to show a cause of action.

The principal case is an interesting addition to the scanty literature upon the liability of the father for the torts of his minor children. The case of *Hoverson* v. *Noker*, Sup. Ct. of Wisconsin, 23 Am. L. Reg. (N. S.) 670, is somewhat similar in its facts. In this case the father was held liable for injuries received by the plaintiff, caused by the frightening of her horse by the two boys of the defendant, who shouted and fired pistols as she passed their father's premises. In order to connect the defendant with the acts of his sons it was held proper to show that such acts had often been done by the boys in the presence of their father prior to the day when the plaintiff was injured. In delivering the opinion of the court, TAYLOR, J., said: "If the father permitted his young sons to shout, use abusive language, and discharge fire-arms at persons who were passing along the highway in front of his house, he permitted that to be done upon his premises which in its nature was likely to result in damage to those passing; and when an injury did happen from that cause, he was not only morally but legally responsible for the damage done. If a parent permits his very young children to become a source of damage to those who pass the highway in front of his house, he is as much liable for the injury as though he permitted them to erect some frightful or dangerous object near the highway which would frighten passing teams; and in such case he cannot screen himself by saying that he did not in words order the erection to be made."

The case of *Beedy* v. *Reding*, 16 Me. 362, may be profitably consulted in this connection. In this case the minor sons of the defendant, being at the same time members of his family, with the defend-

ant's team hauled away the plaintiff's wood. "This (the court say) could hardly have been done without the defendant's knowledge, if it had not his approbation. It was his duty to have restrained them from trespassing on his neighbor's property. *Qui non prohibit cum prohibere possit, jubet.* And the maxim may be applied with great propriety to minor children residing with and under the control of their father." See, also, *Dunks* v. *Grey*, 3 Fed. Rep. 862, 864; also, *Morgan* v. *Thomas*, 8 Exch. 304, where the above maxim is quoted with approval by PARKE, B.

If the above cases are correct, the principal case can hardly be supported. The only way in which it can be distinguished, as it seems to us, is on the ground that the neglect of the parent was not the proximate cause of the damage sustained by plaintiff; but this distinction seems illusory. Although the damage was not perhaps a necessary consequence of the defendant's negligence, it was a natural consequence and one that any prudent man ought to have foreseen. If we concede the above maxim to be a correct statement of a legal principle; if it was the parent's duty to withhold from his infant son so dangerous a weapon, as would seem to be clear upon common-sense principles as well as established by the authorities above cited, then the conclusion seems obvious that he is responsible for the natural consequences of his omission to perform this duty. On principles of policy as well as upon legal principle, it would seem that the father ought to have been held to respond in damages in the principal case. Still the question is not free from difficulty, and perhaps it may finally be settled adversely to the opinion here expressed.

MARSHALL D. EWELL.

Chicago.

Supreme Court of Missouri.

ASKEW *v.* LA CYGNE EXCHANGE BANK ET AL.

A voluntary *bona fide* assignment of personal property, wherever situated, passes it to the assignee at the time of the assignment, and will have priority over subsequent lienors, provided it is not in conflict with some positive or customary law of the state where the property may be located.

The L. bank of the state of Kansas made an assignment in that state for the benefit of its creditors of all of its personal property to J. E. M., a resident of the same state, including a debt due to L. bank from M. bank of the state of Missouri, payable in the latter state. The assignment conformed with the laws of Kansas, and would have been valid had it been executed in Missouri—the assignment laws of the two states being substantially the same. H. A., a creditor of L. bank, and a citizen of Missouri, instituted an attachment suit against L. bank in the courts of the latter state, and garnisheed this debt in the hands of the M. bank. J. E. M., the assignee of the L. bank, interposed an interplea, claiming to be the owner of the debt. *Held*, that as between the attaching creditor and the assignee, the title of the latter would prevail.

THE opinion of the court was delivered by

EWING, Commissioner.—The appellant, on the 27th of February 1880, brought this suit against the La Cygne Bank, a banking corporation created under the laws of the state of Kansas, and there-